

## NAVIGATION

\*Unfortunately, the product's efficient navigation system with the index to the left of screen cannot be contained in this preview. Just use the scroll mechanism to the right and make sure you see the incredible depth of this publication by perusing the various included indices.

# DAMAGES S.A.

## **ASSESSING PERSONAL INJURIES DAMAGES IN SOUTH AUSTRALIA**

**UPDATE TO JULY 2011**  
**but service is up-to-date**

**David Kidd (LLB(Hons) GDLP)**

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## ACKNOWLEDGEMENTS

Many thanks to barristers **Michael Kernot** and **Terry McRae** for encouraging me to produce this work and for their valuable suggestions, contributing to its practical usefulness.

I also thank my assistants **Patricia Lee** and **Mark Nemstas** for their assistance in the preparation of the Hardcover Loose Leaf and Web versions.

The author acknowledges the valuable works listed below which he has consulted:

- **Luntz H: Assessment of Damages for Personal Injury and Death, 4<sup>th</sup> Ed Butterworths 2002**
- **S A District Court Judgments Index**
- **Australian Torts Reporter's (ATR) Comparative Verdicts: Personal Injury and Death Charts**

## PREFACE

As a legal practitioner who has, for over 10 years, specialized in legal research for South Australian barristers and solicitors, I have found demand for research in the area of personal injuries damages awards to be comparatively high. Hence the need for this service.

The need for an appreciation of comparable awards is well recognized. Cox J, for example, in *Packer v Cameron* (1989) 54 SASR 246 @ 250-251 stated:

*"In the end the foundation for any particular assessment is that it is reasonably proportionate to the damages that have been awarded in other cases that are more or less comparable with the plaintiff's, although the overall standard may be subject to periodic revisions to accord with the courts' appreciation of the general level of damages awards that the community, as represented by the insured motorists, can fairly be expected to accept. We were referred to the oft-quoted judicial statements that eschew tariffs and emphasise the need to fasten on the situation of the particular claimant and not the situation of other claimants in other actions ... However, no-one has suggested that damages can sensibly be assessed by some kind of innate impulse ... That is why any new judge whose practice has not given him an insight into the notions of fairness and moderation that find their expression in damages awards in personal injury claims will acquire it as quickly as he can by rapidly scanning a sufficient number of published or digested awards ..."*

This work will indeed greatly facilitate this 'rapid scanning' process.

Not only that, the practitioner will notice **some innovations in this publication not seen in other like publications**. Note for example the:

- (1) **Occupation/Injury cross-referencer;**
- (2) **Multiple injuries cross-referencer;**
- (3) **Listing of cases not only alphabetically by injury but also numerically by scale number;**
- (4) **Wrongs Act & Civil Liability Act annotations; and**
- (5) **Issues section, which provides many useful quotable quotes and case lists on a multitude of issues.**
- (6) **Criminal Injuries/Victims of Crime Compensation Scale, cases and commentary included.**

**I hope, used in conjunction with Luntz's most scholarly book, this loose-leaf service will provide the legal practitioner the complete package in terms of legal research in this area.**

David Kidd (LLB(Hons), GDLP)

## USERS' GUIDE

**\*\*\* Please check for appeals re latest cases as your service may be 3 or more months behind depending on how often you have it updated.**

**NOTE: Where a quote in a précis contains bold emphasis it was highlighted by the author for your assistance.**

## CONTENTS

Preface and Acknowledgements

### 1. **Tables**

- Recent SA decisions
- Multiple injuries cross-referencer
- Occupation/status cross-referencer
- Prescribed multipliers – 1987 - 2008

### 2. **Injuries**

Case summaries are ordered alphabetically in this division according to injury.

- All ages combined

**NOTE :** **All award figures are pre-apportionment** i.e. no deductions for contributory negligence are made.

### 3. **Wrongs/Civil Liability Act Scale and Victims of Crime Act**

Case summaries are ordered numerically in this division according to the number given on the 0-60 scale, or 0-50 scale.

### 4. **Issues**

Quotable judicial quotes on a plethora of damages related issues are alphabetically recorded here according to issues. Some useful case summaries and precedent lists also included.

*See the start of division for more detailed table of contents.*

### 5. **Liability and Apportionment**

### 6. **Defamation (damages for)**

## COVERAGE

District Court / Supreme Court S.A.

- |          |   |
|----------|---|
| 1994 ... | most damages cases re personal injury/death included. |
| Pre 1993 | selected few only.                                    |
| 2001 ... | criminal Injury compensation cases                    |

Various interstate and High court cases also included.

## MULTIPLE INJURIES CROSS-REFERENCER

This will assist practitioners interested in finding awards where there are similar multiple injuries.

**NOTE:** Sample of headings only

Substantial Injury	Other injuries	Plaintiff	Scale
Ankle	Knee & back pain & scarring	<a href="#">Duggan</a>	<a href="#">18</a>
Ankle	Knee - 30% of a most extreme case - 26/5/10 <a href="#">[2010] NSWDC 90</a>	<i>Hamilton v Duncan</i>	
Arm (bilateral fractures)	Face & other	<a href="#">Bibby</a>	<a href="#">27</a>
Brain/Head (medium)	Face (fractures)	<a href="#">Beare</a>	<a href="#">23</a>
Chest (severe crush fracture)	Rib fractures, bleeding in pleural cavity, knee pain, scarring	<a href="#">Panetta</a>	<a href="#">15</a>
Coccyx	Spine (soft tissue multiple)	<a href="#">Langley</a>	<a href="#">15</a>
Depression	Soft tissue spine, hip & scarring	<a href="#">Winfield</a>	<a href="#">18</a>
Ear	Spine (cervical-soft tissue, shoulder (soft tissue), & teeth	<a href="#">Halliday</a>	<a href="#">17</a>
Ear (tinnitus)	Short-term back & neck pain, depression	<a href="#">Johnson</a>	<a href="#">15</a>
Face	Arm (bilateral fractures) & other	<a href="#">Bibby</a>	<a href="#">27</a>
Hand (severe)	Leg (amputation), arm, back, legs, groin, scars, adjustment disorder	<a href="#">Hooper</a>	<a href="#">40</a>
Knee (medium)	Lower/lumbar back (medium)	<a href="#">Bragg</a>	
Knee (severe)	Tibial plateau fracture	<a href="#">Seekamp</a>	<a href="#">17</a>
Leg (multiple)	Spine (soft-tissue – multiple	<a href="#">Baes</a>	<a href="#">12</a>
Psych (adjustment disorder)	Multiple fractures, displaced diaphragm, partially collapsed lungs, soft tissue injury to thumb	<a href="#">Rope</a>	<a href="#">10</a>
PTSD (medium)	Spine (cervical – mild...)	<a href="#">Nunn</a>	
Scarring (facial)	Psychological <i>Logan</i> <a href="#">[2010] NSWDC 128</a>	<a href="#">Logan</a>	
Shoulder (severe soft tissue)	Back (severe soft tissue)	<a href="#">King</a>	<a href="#">23</a>
Shoulders (both)	Depression	<a href="#">Harkins</a>	
Spine (lumbar – medium)	Depression, drug addiction	<a href="#">Cowl</a>	<a href="#">7</a>
Spine (lumbar – severe)	Ankle (severe) & toe fractures	<a href="#">Zacharia</a>	<a href="#">35</a>
Thumb [see Hands (thumb)]	Wrist	<a href="#">England</a>	<a href="#">15</a>
Whiplash	Shoulder	<a href="#">Maroulis</a>	<a href="#">8</a>
Wrist	Thumb	<a href="#">England</a>	<a href="#">15</a>

## OCCUPATION/STATUS CROSS-REFERENCER

This will assist practitioners interested in awards for persons sharing the same occupations or status (e.g. unemployed or pensioner).

**NOTE:** Sample of headings only.

Occupation/status	Injuries	Plaintiff	Scale
Airforce – trainee applicant	Elbow	<a href="#">Biniaris</a>	
Army	Serious knee injury to 18 y.o. Army recruit [NSW case <i>Elliott v Cth</i> 26/11/03 <a href="#">[2003] NSWSC 1090</a> Foster AJ]	<i>Elliott v Cth</i>	
Artist (limited work)	Knee (mild)	<a href="#">Sarantidis</a>	
Baker (apprentice with manag't op)	Foot (toes amputation), fractured femur	<a href="#">Price</a>	<a href="#">18</a>
Fruit picker	Multiple scarring including face, amnesia, double vision, hand	<a href="#">Harvey</a>	<a href="#">20</a>
Glass worker	Spine (soft tissue multiple)	<a href="#">Szumlinski</a>	<a href="#">9</a>
Hair dresser (own business)	Spine aggravation	<a href="#">Vucetic</a>	<a href="#">3</a>
Labourer (heavy)	Legs, ribs & punctured lung	<a href="#">Murray</a>	<a href="#">15</a>
Nurse	Spine (lumbar – medium 10%), drug addiction, depression	<a href="#">Cowl</a>	<a href="#">7</a>
Painter (tradesman)	Crush fracture of the L1 vertebra with loss of anterior height of between 20% and 30% 11/3/11 <a href="#">[2011] ACTSC 37</a> Master Harper	<i>Waugh v Kelleher</i>	
Postman (van driver)	Spine (lumbar - med) 5% impairment	<a href="#">Skaka</a>	<a href="#">10</a>
Receptionist	see <a href="#">Clerical</a>		
Refrigeration mechanic	Spine (lumbar – severe)	<a href="#">Dawes</a>	
Shearer	Ankle (medium)	<a href="#">Schwerdt</a>	
Sheet metal worker	Knee (severe), facial lacerations, spine, teeth, depression	<a href="#">Sprigg</a>	<a href="#">23</a>
Shop (café/clerical worker)	Shoulder, neck, headache & PTSD	<a href="#">Stewart</a>	<a href="#">10</a>
Shop assistant	Soft tissue bruising, emotional reaction	<a href="#">Hardy</a>	<a href="#">18</a>
Teacher (graduate)	Ear (deaf in one ear)	<a href="#">Curtis</a>	
Teacher (primary)	Spine (20% loss of function)	<a href="#">Revink</a>	<a href="#">25</a>
Truck driver	Spine (lumbar) temporary injury to	<a href="#">Walker</a>	<a href="#">5</a>
Waitress	Leg (multiple), soft tissue spine multiple	<a href="#">Baes</a>	<a href="#">12</a>
Welder	Multiple	<a href="#">Seminutin</a>	<a href="#">30</a>



## INDEX to 'Injuries' Section

The following headings appear in the full version. Several précis and quotes appear in the following pages as an example of the information provided in this reference work.

- Abdominal
- Achilles
- Acne
- Agranulocytosis
- Allergic Reaction
- Allodynia
- Amnesia
- Ankle
- Arm(s)
- Arthritis
- Asbestos – see Dust Diseases
- Asthma
- Atrophy (disuse)
- Back - see Spine
- Bladder/Bowel
- Bleeding
- Brain/Head
- Brain & Multiple Injuries
- Breasts
- Bruising
- Burns
- Cancer
- Cerebral Palsy
- Chest
- Chronic Fatigue Syndrome (CFS)
- Coccyx
- Complex Regional Pain Syndrome
- Consortium
- Cough
- Death
  - see also Death & Wrongful Death in Issues section
- Deep Vein see Thrombosis
- Dental
  - Erupted tooth
  - Pain/disfigurement
- Depression
- Dermatitis
- Digestive system
- Disfigurement
  - see also Scarring
- Dog bite - See Dog Attack
- Down's Syndrome
- Dysthymia
- Ear
  - Deaf in one ear
  - Tinnitus
- Elbow
- Epilepsy
- Eye(s)
  - Both
  - Double Vision
- Loss of vision in one eye
- Face
  - Fractures
  - Nerve Damage
- Fibromyalgia
- Fibrosis
- Fingers – see Hands (Fingers)
- Foot
- Ganglion
- Gynaecological
- Hands
  - Fingers
  - Finger Amputation
  - Thumb
- Heart
  - Arrhythmia
  - Stenosis
- Hepatitis
- Hip
- Impotence
- Incontinence see also Bladder/Bowel
- Infertility see Issues Section at Infertility
- Internal Injuries see also Lungs & Spleen
- Jaw
- Kidney
- Knee
- Knees
- Larynx
- Leg
  - Mild/Medium
  - Severe
- Leg Amputation
- Legs
- Life expectancy
- Lip
- Liver
- Loin
- Lungs
- Meningitis - see Meningitis in Issues section
- Mesothelioma - see Dust Diseases
- Minor Awards
- Multiple Minor Injuries
- Muscular
- Neck - see Spine (Cervical)
- Nerve damage
- Nervous Shock - see Psych (Nervous Shock)
- Nose
- Nose - loss of smell
- Operation
- Osteoarthritis
- Ovaries

Pain  
Palsy  
Pancytopenia  
Paraplegia  
Parkinson's Disease  
Pelvis  
Penis (see Sexual Organs)  
Pleural Plaques see Dust Diseases  
Psoriasis  
Psychiatric  
    Adjustment Disorder  
    Anxiety/Depression  
    Anxiety Disorder  
    Chronic Pain  
    Depression  
    Grief & bereavement  
    Nervous Shock  
    Obsessive Compulsive Disorder  
    Personality Change  
    Phobia  
    PTSD  
    Schizophrenia  
    Severe  
    Various/numerous effects  
PTSD  
Q-Fever  
Quadriplegia  
Rash see Skin  
Reflex Sympathetic Dystrophy  
Ribs see Chest  
Sacro-iliac Joint  
Scarring  
    Facial  
    Leg  
Scheuermann's Disease  
Sexual Organs

Penis  
Vagina  
Shoulder(s)  
    Aggravation  
    Both  
Skin  
Soft Tissue Injuries  
    Severe  
Speech  
Spinal Cord  
Spine  
    Aggravation  
    Cervical  
    Lumbar  
    Multiple  
    Osteochondrosis  
Sacrum  
    Soft Tissue  
    Syringomyelia  
    Thoracic  
Spleen  
Teeth see Dental  
Terminal illness – see Cancer  
Thigh  
Thrombosis  
Thumb see Hands (Thumb)  
Tinnitus see Ear  
Toes see Foot  
Tongue see 'Dental' Akbulut  
Urinary  
    Bedwetting  
Vagina – see Sexual organs  
Whiplash  
Wrist  
    Amputation



## INJURIES SECTION

### Ankle

#### Mild

*Ivanoff v Holyoak* 9/8/96 S5748 Full Court – P(m) **hospitality trainee/worker** injured MVA January 1990 when **14** (19 at trial). **Fractured neck of right humerus** and **fractured lateral malleolus of the right ankle**. Suffered pain in the 4 year period from accident to trial. In assessing NEL learned magistrate stated as to the P's injuries "An actual broken arm and significant but relatively minor break to the ankle with ongoing incidence of pain with an **overlay of depression** is clearly worth more than the typical muscular ligamentous injuries that we commonly deal with. This is a real provable injury with acute pain initially, plaster for six weeks and a sling and ongoing problems. I assess it as a 10" @ 5. Permanent **disability to arm estimated at 5-10% and ankle at 5%**. [Scale 10](#)

NEL \$12,400; PEL \$10,000; FEL \$30,000; BvF \$250; **Total \$52,650**

*Jarldorn v Shaw* 21/4/99 [\[1999\] SADC 52](#) Lowrie J (appeal dismissed 1999 SASC 529) – P(m) **casual barman/laboratory worker** seriously injured MVA January 1994 when approx **24** (29 at trial). **Broke the talus bone** in his ankle. This **successfully repaired but he has a permanent disability** and will experience ongoing pain. Also suffered **facial injuries** and required many operations including **major cranial surgery and nasal surgery**. "He has suffered a **permanent loss of [a] portion of his sense of smell [15-20%]**. The significant and permanent injury is the **change in his personality**" @ 32. Suffered a **mild degree of brain damage** causing him to be erratic, argumentative, short-tempered, angry, depressed and violent. He is also conscious of **scarring on his scalp** made clearer by his shaven head. P did not have much of an employment record, but had worked as a casual barman and in a lab doing mini-lab duties and was proposing to do further study in graphic Art. Judge did not see this translating into income for him but in assessing PEL commented the dramatic changes to his personality had made him almost unemployable. He cannot do heavy work either because of the ankle. [Scale 18](#)

NEL \$25,740; PEL \$35,000; FEL \$150,000; future medicals \$5,000; grat serv \$1,000; int. \$2,000; **Total \$218,740**

#### Medium

*Sweet & Schwerdt v Schwerdt* 22/12/94 S4881 Full Court (appeal dismissed from D2941 Brebner CJ) – R(m) **shearer** injured in MVA when **15** in March 1987 (approx 22 at trial). **Injured sub-talar joint which developed arthritis and was deteriorating**. Probably **would have become a contract shearer** being able to earn \$40,000-\$45,000 gross p.a. but for injury. Had managed post-injury to earn \$10-12,000 gross p.a. working as roustabout and shearer. [Scale 8](#)

PEL \$25,000; FEL \$85,000; **Total \$118,000**

*Flecknoe v Yendall* 27/11/97 D3721 Anderson J – P(m) with **sporadic unskilled work history** injured bicycle accident November 1993 when approx **27** (31 at trial). **Fractured the malleolus of right ankle** and suffered a **5-10% loss of capacity of his right leg**. Also developed intermittent non-radiating lower back pain. P was always diligent in searching for work but had some periods of unemployment. [Scale 10](#)

NEL \$13,900; PEL \$35,996.97; FEL \$70,000; grat serv \$1,000; future medicals \$2,650; specials \$6,568.48; int. \$4,100; **Total \$134,215.45**

#### Non-SA cases

*Guides Australia Inc v McMartin* 16/2/06 [\[2006\] NSWCA 20](#) Full Court. "[T]he [R] suffered in the fall a **major lateral ligament tear of the right ankle** which, over time, required **surgery on two occasions** and has left her with **significant impairments in respect of her family, social and working life**. The injury, its treatment and consequences ... has involved considerable pain and distress and continues to do so. ... [T]he use of crutches necessitated by the injury and the

operative treatment thereafter, occasioned an **injury to the [R's] right shoulder** which further incapacitated her and caused continuing pain, impairment and distress and required treatment by, amongst other things, anaesthetic nerve blocks in the shoulder and neck" [135-136]. **Ligamentous damage was the most significant of P's injuries. P's NEL found to be 31% of the most extreme case.**

*Bon Appetit Family Restaurant Pty Ltd v Mongey* 11/2/09 [\[2009\] NSWCA 14](#) Basten JA, Full Court. "26 By reference to *Owners - Strata Plan 156 v Gray* [\[2004\] NSWCA 304](#), the appellant noted that **an assessment of 33% of a most extreme case, with respect to an injury limited to the plaintiff's left ankle, 'was so unreasonable and plainly unjust** that it must be inferred that in some way his Honour failed properly to exercise the discretion reposed in him in making the determination he did': at [41] (Sheller JA, Gzell J agreeing). Such a case may undoubtedly arise: but in the present case, where the defendant accepted at trial a figure of 24% or 25%, the argument cannot run."

*Vasilikopoulos v NSW Dept. of Housing* 5/6/09 [\[2009\] NSWDC 114](#) Hungerford ADCJ. P retiree fell and fractured her left fibula above her ankle joint. P "does have a disabling condition from the ... fall which is chronic but stabilised; her subsequent weight gain clearly would not assist weight bearing on the left ankle and she continues to use a walking stick. ... Only a relatively small amount of domestic assistance was required ... The injury itself was of a **minor fracture** which was successfully treated but with **ongoing disabilities in the left ankle affecting her mobility and day-to-day domestic activity**. Her condition does not require further treatment, other than perhaps some physiotherapy to the ankle and Panadol for pain, although the complaints of pain and numbness will persist for at least two years from the date of the fall into the foreseeable future" @ 46-48. P assessed at **22% of a most extreme case**, but D not liable.

*Schmidt v Woolworths Qld Pty Ltd & Anor* 8/5/09 [\[2009\] QSC 106](#) Dutney J assessed damages in the case of a man who was 25 y.o. (31 at trial) who suffered **compound fractures to and dislocation of his ankle** when his ankle was crushed against a wall at work whilst using a pallet mover. P had open reduction and internal fixation procedures and he underwent a painful and prolonged recovery. Skin grafts had to be taken from his thigh. P, who previously was fit for heavy manual work, is now really only physically suited to light manual work or sedentary duties. He has little in the way of skills for sedentary work due to his limited education. General damages, amongst other heads, assessed at common law at \$65,000.

In *Davies v George Thomas Hotels P/L* 21/4/10 [\[2010\] NSWDC 55](#) Murrell SC DCJ assessed P's ankle injury at **30% of a most extreme case**. He suffered a **serious trimalleolar fracture** in a fall and was on crutches for five months. He has had two operations. The ankle has been infected and is sensitive to knocks. There is scarring. P's employment, domestic and social life has been significantly affected and he can't stand or walk for ten minutes without it aching. It is unlikely to improve. P has become depressed. He has a life expectancy of 30 years. Other heads also assessed and a total award made of \$317,354.

In *Hamilton v Duncan* 26/5/10 [\[2010\] NSWDC 90](#) Murrell SC DCJ assessed the consequences of P's **ankle and knee injuries** from tripping at **30% of a most extreme case**. The "plaintiff underwent left knee arthroscopic partial lateral meniscectomy and medial femoral chondroplasty ... the disabilities associated with the accident caused depression and disappointment. This psychological state was the result of pain, limited capacity to undertake domestic responsibilities, and inability to work and financially support his family. He referred to diminished interest in sexual relations and arguments with his wife because he was unable to undertake household chores and assist with the care of the couple's seriously disabled daughter ... the plaintiff continues to suffer from some pain and instability in the ankle"@35-38. P was 45 y.o. in 2006 when the incident occurred.

In *Wakeling v Coles Group Ltd* 4/4/11 [\[2011\] NSWDC 20](#) the P "sustained a **twisting and swelling injury to his right ankle, followed by a blow to the medial aspect of the ankle** as he fell [in a supermarket]. He also suffered some minor **bruising** type injury to his right knee, wrist, elbow and shoulder. He also suffered a low back injury, which did not become symptomatic for him until several days after the fall. ... [He has] a broad **based L5/S1 annular disc bulge with some similar findings at the level L4/L5**" @47. P has been "left with **persistent pain in his right knee and ankle**, including the experience of sharp pain, which he described as being mild, occurring 2 to 3 times a week. His low back problems remain

intermittently troublesome for him, depending for severity on his level of activity, and he has difficulty laying on his back when sleeping. He experiences difficulty getting out of bed in the mornings due to back pain" @48. He has gained significant weight and has **difficulty walking, which was a favourite activity of his**. He experiences chronic pain in his right lower leg, an inability to 'tinker' with wrecked cars to salvage saleable parts (a hobby of his) and anger and stress which he says has caused him to start smoking again. It's unlikely that P will ever be asymptomatic. P was 22 when injured and 23 at judgment. Levy SC DCJ awarded P \$90,000 for NEL, among other heads.

## Severe

*Boyce v Marley & Atkinson* 23/2/94 D3013 Lowrie J – P(m) **real estate agent** injured MVA Dec. 89 when **34** (38 at trial). **Severe fracture of right tibia requiring internal metallic fixation of ankle**. Ongoing **back, neck and foot pain** and **severe headaches**. Will be degenerative changes in ankle probably requiring future fusion of joint. Large prolapse in neck impinging on nerve root led to fusion of neck joint being done. By mid-92 neck condition stabilized. **Depression**. Changed from happy person to irritable and miserable one. Working very successfully for 1-2 years before MVA as real estate agent on commission. Tried to return to this, but could not cope because of effect of long hours on ankle and back. Also a qualified **boiler maker/welder**, but not able to do such manual or labouring work anymore. Can cope with real estate work, but cannot put in generally expected long hours. [Scale 22](#)

NEL \$25,300; PEL \$122,355.31; FEL \$80,000; specials (past) \$16,461.16 (future) \$5,000;  
**Total \$249,116.47**

*Dopson v Moharich* 4/4/95 D3239 Taylor J – P(f) **checkout operator/receptionist** injured MVA September 1991 when **16** (approx 19 at trial). P **fractured medial malleolus** of right ankle leaving **30% lower limb function impairment** with scarring. Also suffered 30% crush fracture L2 vertebra and minor crush L1 vertebra leaving **residual impairment of lumbar spine 40%**. Percentages were higher than those given by another specialist. It was not clear which specialist judge accepted. Was clear though that P was **struggling to do work as a checkout operator** due to injuries and had lost capacity to do work such as packing shelves, storeroom work and delivery driver. **P able to work as receptionist which she now does** but it may reduce her chances of doing hairdressing which she wants to do. [Scale 25](#)

NEL \$32,750; FEL \$40,000; future medicals \$3,000; BvF \$500; specials \$962.70; **Total \$77,212.70**

*Davis & Davis v Scott & Ors* 26/6/98 [S6745](#) Full Court (successful appeal from D3689 Bright J) – P(m) **plumber** seriously injured in plane crash 1990 when **11** (18 at trial). Injuries in accident included "**closed head injury**, chip fracture left supra and orbital ridge (medial), left peri-orbital lacerations including full thickness laceration to the upper eyelid, abdominal injuries, fracture right mid shaft humerus, fractured left ankle (growth plate injury) [and] L3-4 chance fracture" @ 21. "At ... trial, his principal permanent injuries were the **lumbar injury** which the judge assessed at 25% loss of the whole body and a 10% disability ... to the left ankle ... [the trial judge] ... appears to have overlooked (a revised assessment of) ... **permanent injury to the lumbar spine at 35%** and the **left ankle at 15%**. At trial P was working in the family business as a plumber, but had difficulty with heavy work, and if he ever had to find work on the open labour market he would need a sympathetic employer. **Re nervous shock claim** his mother saw plane go down and **suffered a panic disorder and PTSD**. By late 1996 she had improved but would probably suffer anxiety symptoms on an intermittent basis in future. **Father suffered an adjustment disorder with anxious mood** which settled down after many weeks.

NEL \$60,000; FEL \$100,000; specials \$46,609.80; travel \$500; grat serv \$3,640; **Total \$210,749.80** plus int. \$1,546 **Nervous Shock Damages** Mrs Scott \$10,000; Mr Scott \$6,500

*Kemp & Kemp v District Council of Yankalilla* 10/4/00 [\[2000\] SADC 45](#) David J – 1<sup>st</sup> P(m) **fork lift driver/fruit picker** fell from jetty February 1995 when **26** (approx 31 at trial). As result of accident suffered approximately **60% loss of function of the right ankle** and **40-50% loss of function of the left ankle**. P could not walk without assistance for 2 years. P will not be able to

do any occupation requiring standing for prolonged periods or a great deal of walking, running or climbing, and will not be able to do the forklift driving or fruit picking work he had previously done intermittently. P had a sporadic work history.

NEL \$60,000; PEL \$45,000; FEL \$250,000; specials \$7,363.10; loss of super \$20,000; grat serv \$7,000; future medicals \$15,000; **Total \$404,363.10**

*Newton v Hill* 28/4/00 [\[2000\] SADC 53](#) Bishop J – P(f) injured MVA November 1994 when **17** (approx 23 at trial). P **fractured right ankle** and **tore anterior cruciate ligament in left knee** which was reconstructed. “The plaintiff’s loss of earning capacity is represented by the significant percentage permanent **loss of function of her right leg below the knee (about 30%)** and her **left leg at or above the knee (about 20%)**, taking into consideration the possibility of premature degenerative arthritic changes” @ 30. P had not commenced her working life and was unskilled but nevertheless presented as being an **intelligent and alert young person**. P has “been **deprived of the opportunity to obtain employment as a physically fit woman throughout practically the whole of her working life**” @ 30. P may only find sedentary work now. [Scale 25](#)

NEL \$35,750; PEL (inc int.) \$60,000; FEL (inc medical and other treatment) \$80,000; grat serv \$2,000; **Total \$177,750**

*Lucas v MAC* 6/7/00 [\[2000\] SADC 85](#) Hume J – P(f) **unempl. office manager/accountant** injured MVA July 1996 when **37** (approx 41 at trial). “She suffered a **fracture dislocation of the right talus in her ankle**” @ 8. In future (about 10 years) she **will require a fusion** of ankle as pain will become intolerable. Mobility as a result will be restricted in employment and day to day living. P also has **unattractive scarring** on ankle. P homemaker sacrificed her income to raise children, but is resourceful and probably will work in office management / accounting when children mature. Capacity to obtain and perform such work has been diminished. [Scale 15](#)

NEL \$22,800; PEL \$2,500; FEL \$85,000; specials \$10,023.74; BvF \$2,500; future medicals \$10,000; **Total \$132,823.74**

*Duggan v EVCI & Watts* 2/8/00 [\[2000\] SADC 94](#) Robertson J – P(f) **contract relief school teacher** injured MVA October 1995 when **34** (approx 39 at trial). Major injury was to ankle, which included “**damage to the calcaneo-cuboid joint of the right ankle, an injury to the lateral ligaments ... and scar tissue...**” Also suffered **associated knee and back pain** from time to time. Ankle injury is permanent and symptoms will worsen due to arthritis. Right knee problems will persist. Also **fractured her sternum**. P now only has the capacity to work 3 days p/week. Can no longer work 5 days p/week in any job in which she cannot sit as much as she needs to. Social dancing, which she enjoyed regularly is out. [Scale 18](#)

NEL \$26,100; PEL \$56,000; FEL \$150,000; future medicals \$1,500; grat serv \$3,500; specials \$2,469.35; **Total \$239,559.35**

*Tattoli v Ali* 19/12/00 [\[2000\] SADC 143](#) Lunn J – P(m) **termite technician** injured ankle 1995 when riding in cart pulled by horse when **32** (approx 37 at trial). P left with a ‘**significant permanent residual disability in his left ankle**’, but damages were only relevant to his medical practitioner’s breach of duty which caused him a **loss of chance to have an internal fixation of his ankle joint**. Medical opinion was accepted that even if such an operation was successful 20% of patients would still have suffered osteoarthritis. Further there were other contributing problems in the left foot which would not have been influenced by such a procedure.

PNEL \$10,000, FNEL \$20,000; PEL \$8,000; FEL \$15,000; specials \$1,500; future grat serv \$100; pre-judgment int. \$2,500; **Total \$57,100**

*Zacharia v The Nominal Defendant* 18/8/03 [\[2003\] SADC 120](#) Bright J – P(m) **printer** injured in motor cycle accident September 1999 when **31**. Suffered **5% loss of full and efficient use of right lower limb below knee** due to right **great toe fractures**, **5% loss of full and efficient use of left lower limb below knee** due to left ankle joint injury, **10% whole body permanent physical impairment** and loss of physical function representing his pelvic ring disruption and **5% whole body impairment** and loss of physical function **due to lumbar spine fractures**. P “will have gradually increasing pain in his back and ankle ... will not be able to stand for long periods... will not sit for long without getting up to move around ...will not cope with jobs

involving significant lifting, bending or twisting ... will not return to his trade ... will not play competitive cricket, football or golf" @ 18. P is less outgoing and will have to be careful to avoid depression. A 50% chance he will need a lumbar fusion in 20 years currently valued at \$20,000. He has a net weekly loss of \$744.45. [Scale 35](#)

NEL \$54,600; PEL \$132,711.25; FEL \$300,000; past specials (unpaid) \$12,412.55; future specials \$4,000; past loss super cont \$17,350.97, future loss super cont \$35,144; grat serv \$20,000 **Total \$576,218.77**

*Evans v Reeve* 19/5/08 [\[2008\] SADC 63](#) Soulio J – P (m), **cellar hand, winery laboratory worker & business operator**, injured his ankle when jumping from a trailer in May 1997 when 32 y.o. (41 at trial). "The injury was a painful one which required [P] to be hospitalised for eight days initially. Following discharge ... [P] was restricted in his ability to carry out his employment duties which was a source of frustration to him, and restricted in his ability to carry out recreational activities. In early February 2000 he underwent a further surgical procedure when the plates and screws were removed. In February 2004 he underwent a fusion of the right ankle and again required a period of recuperation of several weeks before he was able to resume physical activities. The right leg in the region of the **ankle has the appearance of being swollen, and is scarred and discoloured**. There are two scars about 10cm and 6cm in length on the inside of the ankle, and a long scar about 20cm in length on the outer side. The [P] contracted an infection after the plates were initially removed and that has resulted in the area of discolouration over the ankle. Whilst the outcome of the fusion has been relatively successful, he is left with a **significant disability of the right leg below the knee and the condition will, if anything, deteriorate** (possibly requiring a further fusion)" @73 (my emphasis). Assessment of economic loss complicated due to P's various pursuits. P also took up fork-lift driving which generated a sound income for him. [Scale 18](#)

NEL \$27,900; PLOEC \$100,000; FLOEC \$125,000; grat. serv. \$2,500; future assistance \$5,000; *WvM* nil; medical \$2,706.90; future medicals \$1,000; Interest \$25,750. **Total \$289,856.90**

#### Non-SA cases

In *Kay v Murray Irrigation Limited* 11/12/09 [\[2009\] NSWSC 1411](#) P (farmer), in a fall in September 2004, suffered "**complex fractures of the left ankle**, including a fracture of the medial malleolus, comminution and compression of the surface of the tibia and displacement of the lateral malleolus ... Three days later he underwent surgery to fix the fractures and to realign the ankle joint. He was discharged after one week with his leg and foot in plaster. He was effectively bed ridden for eight weeks, unable to weight bear on his left ankle because of the complete disruption of the structure of the ankle joint ... Eight weeks after the initial surgery part of the internal structure fixing the fractures was removed after which his ankle was permanently fixed with two screws on the medial malleolus and a plate on the fibula. He was required to wear a protective boot and to utilise crutches for eight weeks after this procedure. He was able to weight bear on his ankle by increments and was free of all walking aids by January 2005. He has the permanent need for orthopaedic footwear as he is unable to walk with his heel on the ground, and even with orthopaedic footwear, to the extent that he needs to weight bear on his left leg, he walks on the ball of his foot. From March or April 2005 he resumed some farm work. He purchased a motorised mustering device which he could drive without using his left ankle at all and endeavoured, albeit with only moderate success, to modify the tractor to avoid using his left ankle ... [P's disabilities include] Difficulty in bending the left foot ... Needing to walk on the outside of the left foot with his left leg externally rotated ... Difficulty in walking any lengthy distance, particularly on uneven ground ... Difficulty in standing for any lengthy period of time ... Intolerance to walking with bare feet ... The deformity and persistent ankle swelling has led to a difference in feet size meaning that the plaintiff has to purchase boots and shoes in a size suitable for the larger size and then pad the boot or shoe for the smaller size ... Permanent limp when walking ... Difficulty in carrying out many household activities ... Difficulty in driving motor vehicles for lengthy periods of time ... Constant need to take Panadol and other pain relief medications ... [and] Depression and loss of confidence" @26-28. Fullerton J assessed P at **35% of a most extreme case**.

*Britten v CPT Manager Ltd* 23/9/09 [\[2009\] QSC 306](#) a 33 y.o. P slipped at a shopping centre injuring her ankle. McMeekin J assessed an **ISV value of 20** for the severe complex fracture of

her right ankle which amounted to \$26,000 in general damages. P lost her capacity to work as a **child care worker** and received \$295,000 for future economic loss amongst other heads.

In *Kaiser v Johnston* 11/6/10 [\[2010\] NSWDC 103](#) P, a 65 y.o (68 at judgment), was hit by a car while walking. He suffered a “**severe traumatic brain injury** resulting in impairment to his cognitive functioning and negative emotional and behavioural consequences [and] ... **[c]ompound fracture of the left ankle** with ongoing pain and discomfort and restriction in range of movement” @128. Sidis DCJ awarded, amongst other heads, \$200,000 in general damages.

In *Craddock v Anglo Coal (Moranbah North Management) P/L* 30/4/10 [\[2010\] QSC 133](#) P, when he was a 43 y.o. miner in August 2005, suffered at work **osteochondral injuries in three locations within his left ankle**. This resulted in progressive arthritic change. P had two operations, but returned to his mining work where he experiences pain, the ankle occasionally locks and is easily injured. “He suffers pain with simple daily tasks such as mowing the lawn or moving his wheelie bin. Carrying anything of significant weight is now a problem for him. ... [S]ince June 2009 he has ceased taking panadeine forte but has taken panadeine at the rate of about a packet of 24 tablets a week. The painkiller taken can vary. ... Mr Craddock was a strongly built man who has maintained his fitness throughout his life. He obviously took great pride in his physical strength and fitness and working ability. ... [H]is capacity to carry out his mining work has been significantly impaired” @15-16. P likely to need another ankle operation. McMeekin J assessed **general damages of \$60,000**, among other heads.

In *Kitson v Skilled Group Ltd & Ors* 5/11/10 [\[2010\] QSC 414](#) Cullinane J awarded the P **\$50,000 in general damages** among other heads for his injured ankle. P was 41 y.o. when he injured his ankle at work. P sustained “a **partial tear of the lateral ligament** of the left ankle which healed with scarring, local pain and tenderness, **synovitis at the antero lateral aspect** of the left ankle, with impingement symptoms and a **compression injury on the medial side of the left ankle with probable osteochondrial damage**” @62. As a result, P has a 9% impairment of the whole person. He has **significant restriction of movement** in his left ankle. P will suffer ongoing symptoms and disabilities and the ankle could deteriorate in the long term.

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## SCALE - CASES ORGANISED ACCORDING TO SCALE VALUE

### Scale 1

Scale	1
<p><i>Evans v Grund; Evans v Jaeschke</i> 24/6/97 <a href="#">D3637</a> Brebner CJ – P(m) <b>diesel mechanic/car appraiser</b> injured in 2 MVAs in Jan 92 and Feb 93. <b>31</b> at trial. In <b>1992 MVA</b> suffered <b>minor neck injury</b> from which P recovered after a few weeks. In <b>1993 MVA</b> also injured neck but more severely. Has had much pain &amp; headaches &amp; eventually had <b>fusion operation on 6<sup>th</sup> &amp; 7<sup>th</sup> cervical vertebrae</b>. Will suffer significant level of discomfort permanently. Also had an <b>emotional response to injuries</b>, which prevented him doing light work, which he was capable of doing. Can no longer work as mechanic. Also has difficulty driving for more than 30 mins at a time and has <b>lost about 50% of capacity to find and keep work in his fields of expertise</b>. Scale <b>1992 MVA 1 – 1993 MVA 25</b>  <b>1992 MVA</b> NEL \$1,370; specials \$75.90 Total \$1,445.90, <b>1993 MVA</b> NEL \$34,750; PEL \$101,000; FEL \$250,000; specials \$27,814.93; future medicals \$1,000; <b>Total \$414,564.93</b></p>	<p>Neck MVA 1</p>

### Scale 2

Scale	2
<p><i>Konidaris v Lipari</i> 6/6/96 S5648 Full Court – A(m) <b>self employed bricklayer</b> in MVA Dec 92 when about <b>40</b> (44 at trial). <b>Temporary state of heightened pain and discomfort in back, strain to neck</b> and general <b>emotional shock</b> with a resultant incapacity for no more than <b>a few days, at most weeks. Incapacity for work for 3 months.</b>                      NEL \$2,740; PEL \$3,000; in lieu of interest \$500; specials \$378.10; <b>Total \$6,618.10</b></p>	<p>Whiplash</p>

### Scale 2.5

Scale	2.5
<p><i>Deverson v Fedele</i> 28/4/94 D2980 Lunn J – P(m) <b>mechanic</b> injured MVA Dec 91 when <b>28</b> (30 at trial). Mild <b>soft tissue injury to lower back and neck and pain in right shoulder</b>. Since MVA disabled from heavy or sustained and repetitive bending. Future improvement expected. Neck and shoulder pain and restriction lasted only a few months. Mild psych problems. <b>Manager/general duties in family (parents') bicycle shop</b>. Since had sympathetic employer could have continued working full-time soon after MVA. From early 1992 capable of doing full job earning \$430 pw gross. This employment, due to liquidation, ended December 1993. Was a competent and versatile mechanic but his unrelated blindness in one eye and reactive anxiety state would have, on their own, made it difficult for him to find employment regardless of the MVA's effects.                      NEL \$3,275; PEL \$4,000; FEL \$10,000; specials \$3,120; <b>Total \$20,395</b> * not awarded as judgment for defendant</p>	<p>Soft tissue back &amp; neck</p>

Scale 3

	Scale	<b>3</b>
<p><i>Oates v Jokic</i> 12/1/94 D2989 Lewis J – P(m) <b>heavy labourer</b> injured MVA August 1990 when <b>26</b> (29 at trial). “<b>Minimal musculo-ligamentous injury to cervical thoracic spine</b>, shock and associated pain and suffering” per head note. Returned to heavy labouring work Dec 90. NEL \$3,450; FEL nil; PEL \$6,797.44; specials \$3,682.66; <b>Total \$13,930.10</b></p>		Spine (soft tissue multiple)
<p><i>Vucetic v Wager</i> 25/10/94 D3156 Pirone J – P(m) <b>hair dresser (own business)</b> in MVA August 1990 when about <b>54</b> (59 at trial). <b>Concussion, contusions and abrasions suffered</b>. Glass in eye. Treated successfully. Degenerated <b>cervical and lumbar spines temporarily aggravated</b>. Effects of MVA spent within 6 months. Ran hairdressing business at a loss, but compensated for loss of chance to secure work as an employee hairdresser for 6 months as found he had decided to end business. NEL \$3,720; PEL \$5,000; FEL nil; specials \$2,167; <b>Total \$10,887</b></p>		Spine, aggrav'n
<p><i>Manatakis v Manatakis &amp; Transadelaide</i> 5/7/96 S5688 Duggan J – A(f) injured in MVA in 1994 when <b>48</b>. Suffered <b>minor soft tissue injury</b> and <b>minor anxiety</b>. General damages \$4,290; grat serv \$400; <b>Total \$4,290</b>.</p>		Soft tissue injury & anxiety
<p><i>Read v McGeachie</i> 2/6/99 [1999] SADC 68 Burley J – P(f) <b>unemployed</b> injured MVA January 1994. Suffered a <b>minor injury to neck at the C1-C3 level causing pain in the neck and head resolving within about 3 months</b>. “She had to undergo physiotherapy and she experienced discomfort with reading and watching television. The pain and discomfort interfered with her sleep from time to time” @9. P would not have been employed regardless of the accident. NEL \$4,290; medicals \$300; <b>Total \$4,590</b></p>		Whiplash



## Scale 4

	Scale	4
<p><i>Sarantidis v Nominal Defendant</i> 29/11/99 [1999] SADC 160 Worthington CJ – P(m) injured MVA Feb 1994 when approx <b>29</b> (34 at trial). “He suffered significant bruising, grazes to both elbows and in the area of his right hip, and general soreness ... [which] would have settled gradually over the next few months” @ 17. Also suffered short-term emotional upset. NEL \$5,720; specials \$4,870 <b>Total \$10,590</b></p>		Bruising
<p><i>Kiriakakis v Voelker</i> 28/9/00 <a href="#">[2000] SADC 121</a> Vanstone J – P(m) <b>self-employed builder</b> injured MVA November 1994 when <b>36</b> (42 a trial). Suffered <b>soft tissue injuries to cervical and lumbar spines</b> in which there was pre-existing degeneration. No surgery or hospitalisation required and effects of MVA would have worn off by about end of 1995. P operated a loss-making business from 1994-1996. Allowance made though for fact he might find himself competing with persons not having a history of injury, which might cause periods of unemployment. NEL \$5,720; PEL \$5,000; FEL \$12,000; int. \$1,300; specials \$4,622.40; <b>Total \$28,642.40</b></p>		Spine (soft tissue) multiple
<p><i>Adamo v Nemet</i> 15/1/01 <a href="#">[2001] SADC 1</a> Lunn J (appeal dismissed [2001] SASC 281 Full Court) – P(f) <b>shop assistant</b> injured MVA December 1998 when approx <b>30</b> (33 at trial). <b>Aggravated pre-existing symptomatic Scheuermann’s disease</b>. P went to work as a shop assistant the next day with pain in back and had difficulty turning her neck. Injuries though interfered with work for a time. MVA likely caused <b>soft tissue injuries to neck, shoulders and lower back</b>. <b>Effects of MVA</b> including restriction on mobility at work and social life <b>probably only lasted 6 months</b>. NEL \$6,120; PEL \$8,000; specials \$4; int. \$45; less credit for specials overpaid \$2,913; less interim payments \$13,000; <b>Total \$1,744</b></p>		Scheuermann’s disease

Scale 5

	Scale	5
<p><i>Neumann v Leonardis</i> 16/4/92 D2471 Thompson AJ – P(m) bespoke <b>panelbeater</b> injured in MVA August 1989 when <b>64</b> (67 at trial). <b>Pain in neck, chest and hands</b>. Off work for 3 weeks. Early 1990 presented as a patient with gradually resolving whiplash soft tissue injury to neck. September 1990 still had neck pain with restricted movement. July 1991 presented with hypertension, generalised neck tenderness and depressive illness. Not worked since December 1990. Also <b>aggravated pre-existing arthritic condition of cervical spine</b> in MVA. “Plaintiff had largely recovered by 1990 but about that time he had a real relapse, partly brought about by his age, concerns about his business and the accident. This became worse and produced conditions and complaints that were treated in late 1991. [MVA] was but one contributing factor” @ 10-11. NEL \$5,750; PEL \$6,750; FEL \$8,750; specials \$826.90; <b>Total \$22,076.90</b></p>		Whiplash
<p><i>Christopoulos v Kooyman</i> 22/12/93 D2982 Lowrie J – P(m) injured MVA working as owner / operator <b>taxi-driver</b> when <b>42</b> (46 at trial). Soft tissue injury to <b>neck and lower back</b>. For 12-18 months afterward unable to work long hours. Hours reduced from about 70 to 40-50. Thereafter not restricted by injuries. P also leased out 3 taxi-plates. NEL \$6,200; P&amp;FNEL \$10,000 (most past); specials \$2,865; int. \$800; <b>Total \$19,865</b></p>		Soft tissue back & neck
<p><i>Pasalidis v Tucci</i> 4/2/94 D2997 Lee J – P(f) <b>teacher</b> injured MVA July 1989 when about <b>37</b> (42 at trial). <b>Soft tissue injury to neck</b> producing only minor discomfort. Resolved by mid-1992. Jaw injured leaving <b>facial discomfort</b> and <b>teeth grinding</b>. Largely resolved. Lost some time from teaching due to MVA injuries. NEL \$5,750; PEL \$1,300; <b>Total \$7,050</b></p>		Jaw, soft tissue neck
<p><i>Deguisa v Hemmings</i> 8/9/97 D3667 Lowrie J – P(m) <b>apprentice panel beater</b> injured MVA June 1994 when <b>21</b> (approx 24 at trial). Suffered <b>ligamentous injury to lower back</b>. Was unable to return to panel beating apprenticeship. Trial Judge had reservations about his resolve to find work but accepted heavy manual work was no longer suitable for him. NEL \$7,150; PEL (with int.) \$44,000; FEL \$55,000; medicals \$729; future medicals \$500; travelling \$314; <b>Total \$107,693</b></p>		Soft tissue lumbar spine
<p><i>Barns v Cirocco</i> 15/1/98 D3745 Noblet J – P(m) <b>business operator</b> injured MVA Sept 1993 when <b>26</b> (30 at trial). Had pre-existing lower back problems including Scheuermann’s osteochondrosis. MVA found to have <b>only aggravated his back problems for about 3 months</b>. He <b>worked in his own business as gutter and tank cleaner and also for a company mixing paint</b> and painting tennis courts. He resigned the latter job 4 months after the MVA, but this found to be not because of the aggravation. NEL \$6,950; PEL \$3,000; <b>Total \$9,950</b></p>		Spine aggrav’n
<p><i>Taylor v Deane-Shaw</i> 9/4/98 D3792 Anderson J – P(f) <b>packer</b> injured MVA March 1993 when <b>37</b>, 42 at trial. Suffered whiplash injury and associated pain and discomfort for 3-4 months. P was working as a packer earning \$476 net a week and was unable to do this for 3 months because of her injuries. NEL \$6,950; PEL \$6,188; specials \$705.55; past medicals \$100; lump sum Int. \$500; <b>Total \$14,443.55</b></p>		Whiplash
<p><i>Walker v SGIC</i> 17/3/99 [1999] SADC 21 Russell J – In June 1993 P(m) <b>truck driver</b> hit by a prime mover when <b>35</b> (approx 41 at trial). Struck in the lumbosacral region from behind probably <b>straining the ligaments that are external to the facet joint of L5-S1</b>. <b>Spine was extended</b> but no damage to any discs. He had fully recovered by 31 Dec 93. NEL \$6,950; PEL \$6,613.92; past specials \$3,528.95; <b>Total \$17,092.87</b></p>		Spine (lumbar)
<p><i>Dimopoulos v Dimopoulos &amp; Delaine</i> 3/11/99 [1999] SADC 150 Allan J – P injured MVA July 1992 when approx <b>33</b> (40 at trial). Suffered a <b>soft tissue injury to her neck</b> and <b>minor bruising to her left knee</b> and was hampered in her <b>work on her husband’s farm</b> for less than a year. Profitability of business was not affected. NEL \$6,850; PEL \$5,000; grat serv \$500; <b>Total \$12,350</b></p>		Soft tissue neck, knee bruising
<p><i>Pilkington v Jamal</i> 25/7/03 [2003] SADC 98 Lunn J – P(m) <b>business operator</b> injured MVA June 1995 when approx <b>43</b> (51 at trial). P’s <b>degenerative lumbar spine was aggravated for about 5 years</b>. P <b>continued to work in his business</b> employed through his family trust for most of this 5 year period but suffered a good deal of pain and inconvenience. NEL \$7,250; PEL \$12,000; specials \$375; <b>Total \$19,625</b></p>		Spine aggrav’n lumbar

Scale	5
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## VICTIMS OF CRIME ACT SCALE 0 – 50

### *Criminal Injuries Compensation Act 1978 and Victims of Crime Act 2001 Scale*

#### CICA/VOCA Scale 1

CICA/VOCA Scale 1	
<p><i>Bober v State of SA</i> 29/4/05 [2005] SADC 35 Burley J. P unemployed draftsman in August 2002, after previously having been assaulted at a bar [such assault not having been pleaded] was later on the same night “hit about the head, thrown to the ground and kicked whilst he was on the ground” @ para 79. P was also <b>threatened with a knife and verbally</b>, and offenders told him they knew where he lived. P received a <b>cut over the right eye</b>, which required suture, a cut or <b>abrasion over his left eye</b>, an <b>abrasion to his scalp</b> above the left temple beyond the hairline and bruising to his back. P’s <b>pre-existing personality disorder aggravated</b>.</p> <p style="text-align: center;">NFL \$1,000</p>	<p>Cut over right eye, abrasions</p>

#### CICA/VOCA Scale 1.5

CICA/VOCA Scale 1.5	
<p><i>Picken v State of SA &amp; Pugliese</i> 3/12/02 [2002] SADC 146 Smith J – P(f) <b>bitten on left arm by D’s dog</b> through car window at petrol station August 2001 when about 20 y.o. D not charged with any offence. Offence against <i>The Dog and Cat Management Act</i> 1995 s43 established however. P frightened by incident, got steri-strips to bind the wound and received a tetanus injection. P missed one day’s work. The bitten area was sore and tender to touch for about one and a half months and she has a <b>visible permanent scar and blemishes</b> which she is conscious of and covers as much as possible with clothing. P suffered <b>sleep disturbance</b> for about 3 weeks and is now <b>nervous around dogs</b>.</p> <p style="text-align: center;">NFL \$1,500; FL \$114.76. <b>Total \$1,614.76</b></p>	<p>Scarring, blemishes &amp; nervousness etc from dog bite</p>

#### CICA/VOCA Scale 2

CICA/VOCA Scale 2	
<p><i>GB v State of SA &amp; McCann</i> 5/11/01 [2001] SADC 150 Herriman J – Parent’s claim for symptoms of <b>depression, sleep disturbance</b> and <b>intrusive thoughts</b> as a result of his child, as a victim, voluntarily participating in oral sex offences with adult. Parent’s <b>fears of son’s sexual inclinations</b> principal cause of condition.</p> <p style="text-align: center;"><b>Total Award \$2,000</b></p>	<p>Parent’s depression</p>

#### CICA/VOCA Scale 2.8

CICA/VOCA Scale 2.8	
<p><i>TB v State of SA &amp; McCann</i> 5/11/01 [2001] SADC 151 Herriman J – Parent’s claim for <b>adjustment disorder</b> and <b>depressed and anxious mood</b> as a result of discovering that her son, as a victim, voluntarily participated in oral sexual offences with adult. She was disgusted, could not sleep properly, had nightmares and her marital relationship was adversely affected. P is more protective now of son, constantly thinks about him and is nervous. P missed some work days. Relationship with son became distant, causing her to grieve.</p>	<p>Parent’s adjustment disorder</p>

## INDEX TO ISSUES SECTION

The following is a full list of headings appearing in the full version only.

- Abolition of damages remedies
- Aboriginals
  - Removed from family
- Abortion
  - Failure to abort child in mitigation
- Academics
  - Assessment of damages re
- Accelerated Benefits
- Accommodation - See Housing
- Actuarial calculations
- Actuarial Tables
- Addictions
  - Alcoholism – assessment
  - Alcoholism (future economic loss)
  - Alcoholism – not an egg shell skull factor
  - Contingencies
  - Discount in light of risk of relapse
  - Drugs
  - Prescribed drug dependence caused by accident
  - Use of alcohol – led to addiction
- Adoption
  - Failure to adopt out In mitigation
- Advocacy
  - Trial Techniques
- Aged & Infirm Persons' Property Act 1940
  - Protection order pursuant to s8a
- Aggravated damages - see Exemplary/Aggravated damages]
- Agricultural enterprises
- Air passengers
- Airconditioning
- Alcoholic - see Addictions
- Allowances
  - Training
- Alternative Career
- Alzheimer's Disease
- Amputation
- Annual Leave
- Antedating judgment
- Appeal
  - Approach on Appeal
  - Global Sum & Wrongs Act Approach
  - Jury v Judge alone verdicts
  - New trial (Power to order on limited question)
  - Re-assessment of damages
  - Total award (very high)
  - Trivial variations to assessment
- Armed forces - see Military operations
- Artists/Performers
  - List of further cases involving such people
- Asbestos – see Dust Diseases
- Asherman's syndrome
- Assault & Battery
- Assessment
  - Assessment, not Calculation
  - Assessment Philosophy
  - Assessment Principles (general)
  - Average weekly earnings
  - Compensatory principle
  - Mathematical calculations
  - Mathematical error
  - Relevance of other awards, local & interstate
  - Splitting the difference
- Austudy
- Average weekly earnings
  - Gender differences
  - Whether relevant to assessment
- Baby
  - Brain Injury
  - Loss of
  - Having baby/opting out of workforce because of MVA
  - Quadroparesis
  - Unborn
- Beck v Farrelly* - see Volunt/Grat Serv
- Benefit to others from services to P
- Bereavement - see Nervous Shock
- Grief
- Blindness - see Vision
- Boarding & Lodging - see
- Vol.Grat.Serv
- Body Function (loss of) see Overall Bodily Function
- Brain
  - Most Serious Injuries (assessment re NEL)
  - Neuropsychological testing
- Brave/Courageous plaintiff
- Breach of contract
  - Damages for physical and mental injury
- Breasts
  - Implants
  - Reduction surgery
- Buffer/Cushion - see FEL Buffer/Cushion
- Business/Family Business
  - Assessing EL when voluntary arrangement distributes income regardless of actual work contributions
  - Assessing loss of earning capacity damages
  - Goodwill (loss of)
  - Income sharing arrangements
  - Injured in early stages of business
  - Injured, but doesn't lose much income as business can continue
  - Loss of chance to start up a business
  - Loss of deceased spouse/partner's services

- Mitigation of Loss
- Past Economic Loss
- Replacement Labour
- Spouse with earning potential injured while working in unprofitable business
- Unprofitable business
- Cancer
  - Pancreatic
- Car Cleaning Expenses
- Caravan
  - Needed to move from caravan to house
- Care and Guidance
  - Loss of
- Carers
  - Carers allowance/benefit
  - Economic use of
  - Live-in
  - Passive care
  - Psychiatric injury
  - Supervision of
- Case Manager
- Causation
  - Disentanglement of 'wrongful' and innocent causes
  - General principles
  - Independent causes leading to reduced earning capacity
  - Material contribution
  - Novus Actus
  - Superseding events
  - Supervening events
- Cerebral palsy
  - NEL/General damages
- Chance - see Loss of chance
- Charitable benefits - see Gratuitous payments
- Child Care - see Children-child care
- Child Support
  - Loss of
- Children
  - Ability to cope with disability
  - Capacity to care for self
  - Child care
  - Cost of bringing up
  - Earning capacity (socio-economic background)
  - FEL (assessing)
  - Prospective
  - Unborn
  - Unwanted children
  - Young children suffering minor injuries
  - Young children/infants suffering total loss of earning capacity
- Choice of Law - see Conflict of Laws
- Civil Liability Legislation
  - Civil Liability Act (SA) 2002
    - s32 - Precautions against risk
    - s34 - General principles
    - s36 - Meaning of 'obvious risk'
    - s37 - Injured person presumed to be aware of obvious risk
    - s38 - No duty to warn of obvious risk
    - s39 - No liability for materialisation of inherent risk
    - s40-41 - Standard of care of professionals
    - s52(1)(b)
- Cleaning
- Collateral benefits

- Colostomy apparatus
- Comparable verdicts
  - Providing range to court
- Compensatory principle -
  - see Assessment-Compensatory principle
- Computer/Technology system
  - Baby
- Conditional payments
- Conflict of laws
- Consortium (loss of)
  - General principles (summary of)
  - Elderly
- Constitutional Law
- Contingencies
  - Absentmindedness
  - Addictions (risk of relapse into)
  - Against defendant (operating)
  - Chance of obtaining more remunerative employment
  - Children (having)
  - Dangerous activities of plaintiff
  - Discounting actuarial calculation
  - Expenses of earning a living
  - Favourable
  - General
  - Motorcycling
  - New relationship
  - Pre-existing conditions - see Pre-existing conditions]
  - Premature death
  - Recurrent depressive illness from unconnected accident
  - Scope of discount for
  - Short period of FEL
  - Sickness
  - Sympathetic Employer
- Contribution
- Cosmetic surgery
- Costs
  - Claim fails in part (where)
  - Indemnity basis
  - Institution of Proceedings in Wrong Jurisdiction and 90 Day Rule
  - Third parties
- Counselling
- Criminal Injuries Comp - see Victims of Crime Act
- Criminal Record
- Cross vesting - see Transfer of Proceedings
- Cultural Fulfilment
  - Loss of
- Currency of judgment
- Dangerous recreational activity
- Death - see also Wrongful Death
  - Articles
  - Claimant of (from non-compensable causes)
  - Contingency of premature death
  - Loss of child care services
  - Loved Ones in Accident
  - Overtime
  - Proportion of deceased's income available to family
- Declaratory judgment
  - S30b Supreme Court Act
  - Criteria for granting
  - Final assessment not made
  - Interim award NEL

- Onus
  - When not made
- Degenerative conditions
- Delay
  - In bringing Proceedings
  - Onus of providing unreasonable delay
- Dependency -see Financial Support - loss of
- Dependents
  - Definition of
  - Method of assessment
- Depreciation
- Depression
- Diabetes
- Dignitary interest
  - Violation of
- Disappointment
  - Damages for
- Discount rate
  - Degenerative spine
- Disfigurement
  - Prospects of Marriage
  - Sexual attractiveness
  - Subjective factors
- Divorce/Separation - see Marriage break-up
- Dog attack
  - Bite
- Domestic Assistance
  - Past
- Double Benefit - see Windfall
- Concerns
- Double Comp'n - see Windfall
- Concerns
- Driver's Licence
  - Loss of
- Drug Addict - see Addictions
- DSM-IV Criteria
- Dust Diseases
  - General assessments
- Earning Capacity
  - Children
  - Discretionary Award in General Damages Award
  - Distinction between 'loss of earnings' and 'loss of earning capacity'
  - Education
  - Employment prospects
  - Fringe benefits
  - General principles
  - Greater earning potential because of career change
  - Loss of (principles for assessing)
    - From independent causes
    - Principles for assessing
    - Proof of
  - No will to work
  - Partial loss of
  - Percentage Loss
  - Person not likely to have exploited it fully
  - Plans to exercise it more fully
  - Restoration of by damages award
  - Set off
  - Tips
  - Undisclosed income [see Income – undisclosed]
  - Unexploited or under-exploited capacity
- Vulnerability to dismissal
- Economic loss - see
  - Earning Capacity
  - Future economic loss/loss of earning capacity
  - Past economic loss
- Education
  - Additional costs of
  - Relevance to income
- Egg-shell Skull
- Elderly
  - Assessment considerations
  - Psychiatric disorder
- Employment
  - Fulfilment (loss of)
- Employment History
  - Past economic loss (assessing)
  - Poor employment record
  - Youth
- Employment Prospects
- Entertainers - see Artists/Performers
- Environmental Control Unit
- Epilepsy
- Equipment Claim
  - Automatic gates
  - Bedding
  - Boots (special)
  - Cerebral palsy (person with)
  - Chair (swivel)
  - Commode
  - Communicator (Galah audible)
  - Computer
  - Eating equipment
  - Electric bed
  - Electrical toothbrush
  - Environmental control unit
  - Frame (walking & standing)
  - George Foreman grill
  - Hoists
  - Incontinence aids
  - Jay cushion
  - Mobile phone – see Mobile telephone
  - Parallel bars
  - Paraplegic
  - Postural inserts
  - Quad walking stick
  - Ramps
  - Severely injured infant
  - Shower chair
  - Socks (special silicon for pressure sores)
  - Spinal cord stimulator
  - Toileting
  - Wheelchair – see Wheelchair
- Evidence
  - Burden of proof
  - Death of expert witness
  - Disentanglement
  - Earnings
  - Exaggeration/Deception
  - Failure to lead
  - Future loss (establishing)
  - Lay v Medical
  - Medical
  - Not to be deprived of damages because evidence makes calculation difficult
  - Over-elaborate evidence sometimes unhelpful
  - Presumptions

Video footage  
**Exemplary/Aggravated Damages**  
 Articles  
 Assault by employees  
 Assault by Police  
 Distinguishing aggravated & exemplary damages  
 Distinguishing aggravated damages from ordinary NEL  
 Equitable claim  
 Provocation  
**Expenses** - see Medical & Hospital expenses  
**Experts**  
 Opinions  
**Extension of time**  
**Eyes**  
 Loss of vision in one eye  
**Face** - see Cosmetic surgery  
**Facebook**  
**False Imprisonment**  
**Family Home**  
 No reduction in damages for gaining interest in  
**Family Law Issues**  
 Maintenance  
**Family Trust**  
 Calculating LOEC  
**Farming** - see Agricultural Enterprises  
**Final Assess't** - see Declaratory Judgment  
**Financial Management**  
 Poor  
**Financial skills**  
 De facto's claim re deceased partner  
 Loss of spouse/s/partner's  
**Financial Support**  
 Loss of  
**Firewood**  
**Foreign Currency** - see Currency of Judgment  
**Fostered Children**  
 Removed from family  
*Fox v Wood* damages  
**Fraud/Deception**  
**Fringe Benefits**  
 Loss of  
**Fulfilment Emp't** - see Emp't  
**Fulfilment**  
**Fund Management** - see Managing  
**Fund**  
**Funeral Expenses**  
 Average Australian funeral  
 Unreasonable  
**Future Care**  
 Cerebral Palsy  
 Full-time care (mode of providing)  
 Full-time care (whether required)  
 General principles  
 Home v Hospital Care (home visitations)  
 Home v Hospital Care P violent towards mother)  
 Independent/semi-independent living  
 Paid v Unpaid  
 Partner's contribution (relevance to assessment)

Reasonableness  
 Severely injured infant  
 Uncertainties concerning extent of need for Vacation care  
**Future Economic Loss/Loss Earning Capacity**  
 Addictions - Alcoholism (FEL)  
 Assessment of (general principles)  
 Baby  
 Back & neck pain (future loss caused by)  
 Buffer/Cushion  
 Children  
 Components of sum awarded not adequately articulated  
 Co-workers' earnings/career path subsequent to P's injuries  
 Difficulty in assessing (when)  
 Earning more, still compensated for LOEC  
 Employment (chance of obtaining more remunerative)  
 Employment history  
 Income Protection policy  
 Life Expectancy  
 Loss of earning capacity,  
 Lost years  
 Onus  
 Post-accident earnings  
 Pre-accident earnings  
 Realities of the Market Place  
 Residual earning capacity  
 Rise in wages  
 Social Security – History of receiving  
 Social Security history  
**Gardening**  
**Gender Reassignment**  
**Gratuitous Serv** - see Voluntary/Grat Serv  
**Gratuitous Payments**  
**Grief** - see Nervous Shock  
**Gym**  
**Gynaecological**  
 Non-SA cases  
**Handyman Services**  
**Hearing**  
**Heart transplant patients**  
**HECS Fees**  
**HIV**  
**Hobby Farm** - see Agricultural Enterprises  
**Hoists**  
**Holidays**  
 Additional cost  
 As part of recovery process  
 Future care whilst on  
 Limited Awareness  
**Home Alterations** - see Housing & Wheelchair  
**Home Care**  
**Home Environment System**  
**Home Maker**  
 Loss of capacity as  
 Unexercised capacity  
**Home Pool** - see Pool  
**Home Renovations**  
 Doing renovations whilst off work  
 Loss of opportunity to do

Hospital expenses - see Medical & Hosp Exp  
 House Husband - see Homemaker  
 'Household  
 Housekeeping Services  
     Past  
 Housing  
     Additional costs  
     Baby (future assessment re)  
     Barn  
     Capital Costs  
     Capital value increase due to alterations  
     Future home modifications  
     Improvements  
     Modifications to P's parents' home  
     Painting  
     Paraplegic's requirements  
     Purpose built v modification of existing housing  
     Sale of house  
     Severely injured infant  
 Housewife/husband - see Homemaker  
 Huntington's Disease  
 Husband  
     Loss of support of  
 Hydrotherapy  
 Hypothetical Events  
 Hysterectomy - see Gynaecological  
 Imprisonment  
 In vitro fertilisation - see Medical & Hosp Exp (f) - In vitro fertilisation  
 Incapacity  
     Onus  
 Income  
     Tax fraud  
     Taxation of personal damages  
     Undisclosed  
 Income Protection Policy - see Collateral benefits  
 Infertility  
 Inflation  
 Inheritance  
     Accelerated  
     Loss of prospective inheritance  
 Injury-created need  
 Inquiry  
     Order for  
 Insurance  
     - see also Collateral benefits  
     Loss of availability of  
     Premiums (deduction of)  
 Interest  
     Date of calculation  
     Delay in bringing proceedings  
     Discretion to award lump sum  
     Economic loss  
     Future detriment  
     Naval cases  
     Past care  
     Past Economic loss (PEL)  
     Past housekeeping services  
     Rates – past v present day  
     Receipt of Workers Compensation  
     Special damages  
     Taxation  
     Voluntary/Gratuitous services

Interim Assessment/Award  
 Interstate Accidents  
 Intestacy - see Inheritance  
 Investment skills  
     Loss of spouse/partner' skills  
 Joinder  
 Jurisdiction  
 Jury verdicts / Issues  
 Kidney  
 Labour Market - see FEL - Realities  
 Landscaping  
 Lawyers  
 Life Expectancy  
     Articles (general)  
     Articles (cerebral palsy)  
     Assessment of (prospective life tables)  
     Brain injury (major)  
     Effect of shortened life expectancy on assessment of damages for pain and suffering  
     Heart transplant patients  
     Loss of  
     Pancreatic cancer  
     Paucity of evidence  
     Spinal cord injuries  
 Lift  
 Litigation guardian  
 Liver Transplant  
 Loan  
 Long Service Leave  
 Lord Campbell's Act Action  
 Loss of Chance  
     Articles  
     Business/Employment opportunities  
     Health outcomes  
     Legal outcomes  
     Promotion  
     Skill development (of)  
 Loss of Earning Capacity - see FEL/LOEC  
 Loss of Financial Support - see Financial Support  
 Loss of Enjoyment  
 Lost years  
 Maintenance  
     Deduction for  
     Property maintenance  
 Malicious Prosecution  
 Management Expense Ratio Fees (MERS)  
 Managing Fund  
     Calculating the present value of the cost of fund management  
     General principles  
     Baby  
     Taxation issues  
 Marriage  
     Loss of benefits accruing from  
 Marriage breakdown/break-up  
     Accommodation  
     Depression (accident-caused)  
     Nervous shock (consequence of)



Prospects of (assessing)  
 Sexual problems  
**Material fact of decisive character**  
**Mathematical error**  
**Medical Action - see Mitigation**  
**Medical Advice**  
**Medical & Hospital expenses (future)**  
   Abdominoplasty  
   Blood tests  
   Bony limb surgery  
   Diversional therapy  
   Drugs (not fully tested)  
   Drugs/Medication (expensive option)  
   GP Consultations  
   Home visits by GP  
   Hospitalisation  
   Invitro fertilisation  
   Liability for (must be liable to pay them to recover)  
   Music therapy  
   Neurologist  
   Occupational therapy  
   Ophthalmologist view  
   Overseas treatment  
   Paraplegic  
   Pharmaceutical expenses  
   Drugs on PBS attracting rebate  
   Physiotherapy  
   Podiatry  
   Psychology  
   Reasonableness  
   Rehabilitation physician  
   Speech pathology/therapy  
   Theatre & facility fees  
   Travelling for treatment  
**Medical Evidence - see Evidence**  
**Medical Examination**  
**Medical Expenses**  
   Prescribed minimum  
**Medical Negligence**  
   Articles  
   Birth  
   Contraceptives  
   Cosmetic surgery – see Cosmetic surgery  
   Cure (loss of chance for)  
   Diagnosis (failures re)  
   Drugs (negligent administration of)  
   Endoscopy  
   Failure to warn  
   Injections  
   Leg lengthening procedure  
   Loss of chance  
   Operations (negligent)  
   Pleadings - amendment of  
   Pregnancy  
   Recording history  
   Reports  
   Treatment exacerbating injury  
   Warfarin care  
   Wrongs Act and Medical Negligence  
     Damages Cases  
**Medical Reports**  
**Medical Treatment**  
   Contributing to dependency  
   Contributing to injury  
   Delay in seeking  
   Likelihood of obtaining  
   Postponed (relevance of inflation)

**Medicare Rebate**  
**Meningitis**  
   General medical information  
**Mercury**  
**Mesothelioma see Dust Diseases**  
**Military Operations**  
   Injuries/Aggravations during  
**Mitigation**  
   Abortion  
   Adoption  
   Appliances  
   Assumed plaintiff will adopt course that minimises his/her loss in monetary terms  
   Business Losses  
   Failure to Mitigate  
   Infants  
   Medical (general)  
   Medical (reasonableness)  
   Obligation to spend money in mitigation  
   Onus  
   Pleadings  
   Reasonable costs of (recovering)  
   Rehabilitation  
   Retraining  
   Study (undertaking)  
   Surgical Procedures  
**Mobile Telephone**  
   Hands free  
**Modelling**  
 ‘Moderate’ injuries  
**Most Extreme Case**  
**Motor vehicle - see Transportation**  
**Music (see also Hearing)**  
**Nanny Care**  
**Naval Cases**  
**Negligence - See Solicitor’s Negligence**  
**Nervous Shock**  
   Aggravation  
   Defined  
   Grief and bereavement  
**Neurophysiotherapy**  
**Next friend - see Litigation guardian**  
**Non-Economic Loss (NEL)**  
   Alcoholic  
   Appeal (approach on)  
   Assessment approach  
   Holidays  
   Plaintiff’s awareness of plight  
   Reduction for limited opportunity for pleasure  
   Subjective factors  
   Young person  
**Novus Actus - see Causation - Novus Actus**  
**NSW Assessment Cases**  
**Nuisance**  
**Nurse**  
   List of further assessment cases involving nurses  
**Once and For All Rule**  
**Onus of Proof**  
   Earning capacity  
   Pre-existing conditions  
**Operation - see also Operation in Injuries**

- Orthopaedic bed
- Orthotics
- Overall Bodily Function
- Overall Working Capacity
- Overtime (loss of)
  - Stopped doing it after wife died
- Pain & Suffering
- Paraplegic
  - Future domestic assistance
- Parents (both die)
  - Damages where both parents die
- Part-time work
  - Students
- Particulars
- Partnerships
  - Loss of Earnings
  - Replacement labour
- Past Care
  - Severely injured infant
- Past Economic Loss
  - Assessment period
  - Interest - see Interest – Past Eco Loss (PEL)
  - Partnership (calculating PEL when injured P in partnership with wife)
  - Principles for assessing
  - Vicissitudes
- Payments to victim before judgment (treatment of)
- Pensioner
- Pensions/Benefits
  - Armed Services
  - Future earnings
  - Injury to person on pension
  - Interim invalidity pension
  - Non-deduction of
- Per quod servitium amisit
- ‘Person Interested’
- Personal Grooming
- ‘Personal Injury’
- Personal Trainer
- Personality Change
- Pleadings
  - Amendment of
  - Mitigation
- Pleural Plaques - see Dust Diseases
- Pool
  - (see also Housing (future home modifications))
- Post-accident earnings
- Post accident/pre-assessment
  - subsequent injuries and successive injuries
- Post Traumatic Stress Disorder
- Predisposition
  - ‘Decompensation’
- Pre-existing Conditions
  - Contingencies
  - Parkinson’s disease
- Pre-judgment payments to victim (treatment of)
- Pregnancy
  - Potential problems if gets pregnant
  - Termination
  - To full void caused by loss of child
- Wrongful life
- Premature death - see Contingencies
- Prescription drugs
- Prisoner
- Promotion
  - Loss of chance
- Property damage & Personal Injury - see Motor Vehicles Act s125
- Prosthetics
- Psychiatric injuries
  - Aggravation
  - Coping with (factors relevant to ability to cope)
  - Elderly
  - Personality change
  - Significant achievement despite injuries
  - Susceptibility to
- Psychologists
  - Evidence of
- Public Policy
- Public Speaking
- Public v Private Benevolence
- Reading
  - see also Vision
- Reasons
  - Economic loss
  - Medical evidence (re)
- Rebates - see Taxation-rebates
- Recent SA Decisions**
- Recreational Services
- Redundancy Payments
- Rehearing
- Relocation Expenses
- Re-marriage
  - Contingency of widow remarrying
  - Disfigurement
- Remote area
  - Chance of obtaining employment in
- Remoteness of Damage
- Removal of proceedings to another court
- Remunerative work at home whilst injured
- Renovations - see Replacement services
- Re-opening case
  - Post trial but pre-judgment new helpful medical development
- Replacement Labour
- Replacement Services (Home duties)
- Residual earning capacity
  - Onus
- Respite Care
- Retirees
  - Early retirement
  - Evidence of retirement plans
- Retraining/Study
- Scale [0-60]
- Separate Hearings
  - Liability and Quantum
- Services to Others (Loss of)

Set off - see Earning capacity (set off)

Settlement

Approval of

Sex Worker

Sexual Assault / Misconduct

Sexual misconduct exception NSW

Sexual organs

Sexual partner

Duties owed to/by

Sick Leave

Smell

Smoking

Social & Economic Position

Social Security

History of recurring

Preclusion periods

Wrongly Receiving Benefit

Social/Sporting Life

Serious Disruption

Solicitor's negligence

Special Benefits

Special Damages

Definitional (future)

Distinction between special and general damages

Interest on

Pleading of

Special Equipment - see Equipment

Claim

Sportspersons

Elderly

Football

General

Reasonableness of Continuing Sporting Activities

Stoma

Students/Studies

Foreign students

Lost time

Stunt Performers

Subpoena

Successive Accidents

Successive independent tortfeasor

*Sullivan v Gordon Damages*

Superannuation

Baby

Deduction of premiums

Disregard in assessment of damages

Employer's contribution (loss of)

Future Loss of Benefits

Loss of superannuation contributions

Self-employed (future loss)

Superseding/Supervening Events

Surveillance film

Survival of Causes of Action Act 1940

SA

Swimming Pool - see Pool

Sympathetic Employer - see Contingencies-sympathetic employer

Taxation

Family Trust

Fraud

Future changes to tax law

Hypothetical lost income - tax on (onus issue)

Income tax - impact on award of damages

Non-disclosure of income

Rebates

Voluntary/Gratuitous Services Provided by Defendant

Telephone Calls

Therapeutic Aids - see Equipment Claim

Therapy

Time Limitations

Material fact of a decisive character

Tips

Tracheotomy

Transfer of Proceedings

Transportation

Baby (assessment re future needs)

Driver

Future costs

Injury-created need

Modified vehicle

New vehicle

Parking

Saved Expenses

Taxi

Treatment

Van with hoist

Travel

Airfares

Unconscious Plaintiff

Undiagnosed condition discovered

Unemployed Person (injury to)

Unskilled workers

Unwanted Children - see Children Unwanted

Vacations - see Holidays

Vasectomy

Vicarious liability

Exemplary damages

Vicissitudes - see Contingencies

Victims of Crime Act 2001

Aggravated damages

Annotations to Victims of Crime Act

Assault

Assessment Principles

Causation

Children (financial loss)

Conduct contributing - s7(9)

Conduct contributing (sexual assault)

Consent orders - s7(7a)

Corroboration

Engaged in conduct constituting an indictable offence (victim was)

Extension of time - s7(4)

Financial loss

Hindering investigation - s7(9a)

House (sale of)

Housing (sale of house)

Hospital visitation

Injury (in consequence of commission of offence)

Injury ('in respect of an injury arising from the offence')

Jury verdicts

Not charged with offence - s8(1b)

Damages Update No 29 - July 2011

Parent's fears of son's sexual inclinations  
Payments made by others (s20)  
Psych consequences from reporting or discovery of offending  
Scale (principles to apply re 0-50 scale)  
Sexual (parent's fears of son's sexual inclinations)  
Victim (definition of)

**Vindication**

**Violent plaintiff**

**Vision**

Employment prospects of visually impaired  
Loss of ability to read

**Voluntary/Gratuitous Services**

Articles  
Boarding & Lodging  
Both parents died pre Wrongs Act s35a  
Broader than nursing and home help  
Children recovering for loss of services of deceased or injured parent  
Children – services provided to injured person's children  
Commercial enterprise (gratuitous assistance provided to)  
Church remuneration  
Determining whether a person will continue providing voluntary services  
Domestic assistance [see also domestic assistance]  
Expenses incurred by market provider  
Gifts  
Girlfriend's services  
Gratuitous payments  
Interest on damages for  
Labour provided free to P's business  
Liability to pay based on need  
Market rate  
Necessary (whether)  
Paraplegic  
Passive care  
Past voluntary/gratuitous services  
Pre-existing conditions  
Provided by defendant  
Public v private benevolence  
Spouse & family members (provided by)  
Takeaway meals (obtaining)  
Threshold  
Tortfeasor (provided by)  
Trust  
Valuation of Services  
Who is compensated?

**Vulnerability on Labour Market - see**

Earning capacity (vulnerability)

**Wages**

Paid by employer during worker's absence  
Paid by loan  
Paid to worker during incapacity (nature of)

**Wealth of Plaintiff**

**Weight Gain**

**Wheelchair**

All terrain  
Beach  
Caravelle van for  
Gloves  
Hand cycle  
Increase in need for in the Future  
Manual  
Sports  
Use and maintenance of

**Whole person impairment**

***Wilson v McLeay* damages**

Loss of Consortium

**Windfall Concerns**

Distinguishing aggravated damages from NEL  
Double compensation  
GST  
Home pool  
Superannuation  
Voluntary/Gratuitous services provided by tortfeasor

**Workers Compensation**

Supervening events  
Tax on (recovery of)  
Workers Compensation Payments  
WRCA S.43  
WRCA S.54(1) & (2)  
WRCA S.54(5) & (7)

**Wrongful Conception and Birth - see**

Children (unwanted)

**Wrongful Death**

Articles  
Benefit to surviving spouse  
Loss of financial support  
Pecuniary Benefits (loss of expected)

**Wrongs Act (pre Civil Liability Act)**

S.29  
S.20  
S.29(2a)  
S.20(2aa)  
S.20(3)  
S.22  
S.24H(a)  
S.34

**Wrongs Act (Historical)**

S.35A  
S.35A(1)(b) – use of scale  
S.35A(1)(i) – seat belts  
S.35A(2) and its relationship to s.35A(1)(h)

**Young Workers**

Relatively young manual workers not being able to return to manual labour

**Youth**

Employment history  
Whether an assessment factor

## ISSUES SECTION

...

Sample only.

### Disfigurement

#### *Prospects of Marriage*

“But a matter which is not canvassed in his Honour's reasons, but which is one that, in my view, creates one of the most serious consequences for the appellant is the effect that the scarring and disfigurement of her body will have on her sexual attractiveness and her prospects of marriage. Although the scarring and disfigurement will not, in the nature of things, deprive her of her chance of marriage, I would think the time will come when, if she should form an attachment to a young man, or if indeed she should receive a proposal of marriage, she will feel bound, under a sense of moral duty, to reveal the imperfections of her body and the unsightly scarring which disfigures it. In the event of her marriage, the problems likely to be associated with the happiness and comforts of a fulfilling married life cannot be discounted, even though she may have a patient and understanding husband. It is true that the scarring and disfigurement can now be concealed by a suitable mode of dress, but the appellant has not yet had to come face to face with the experience of womanhood and all the vagaries of fashion. When she does so, she may find that the realities of life will not be as kind to her as they have been up until now.” **Young v Woodlands Glenelg Church of England Girls Grammar School Inc** (1979) 85 LSJS 15 @ 20 *Walters J (Full Court)*

#### **Sexual attractiveness**

[See [Disfigurement – Prospects of Marriage](#)]

#### **Subjective factors**

“The other matter concerns his facial deformity. [Counsel] complains that he did not say in evidence that he was embarrassed by the change to his face. On the other hand, he nowhere said that he was not embarrassed by it. In my view, whenever there is some physical loss, be it of function or appearance, some damages are presumed as a result, and if there is no evidence one way or the other as to the effect of the injury or loss in question on the plaintiff's happiness, the court will presume that he would suffer what an ordinary man in such circumstances would suffer - neither more nor less. It is for the plaintiff to show that the loss had on him more effect than it would have had on an ordinary man who had suffered the same loss and, in my view, on the defendant to show that it had less effect than it would have had in the case of an ordinary man suffering the same loss.” **Turley v Saffin** (1975) 10 SASR 463 @ 473-474 *Bray CJ (Full Court)*

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## DAMAGES FOR DEFAMATION IN SOUTH AUSTRALIA

*This new section will keep you informed of recent assessments of damages in S.A. defamation cases. Useful statements of principle will also be catalogued. Both quantum and apportionment of damages defamation case law will be canvassed.*

### INDEX

#### Apportionment

General Principles

Radio Broadcaster/Guest

#### Quantum

Affairs

Aggravated Damages

Aggravating factors (anonymity)  
Aggravating factors (apology insufficient)  
Aggravating factors (apology – lack of)  
Aggravating factors (baseless allegations)  
Aggravating factors (calling for prosecution of P)  
Aggravating factors (conduct during the case)  
Aggravating factors (defence of truth)  
Aggravating factors (knowledge of falsity of allegations)  
Aggravating factors (malice)  
Aggravating factors (negligent enquiry)  
Aggravating factors (pleading justification)  
Joint tortfeasors  
Liability for  
Nature of  
Poisonous relationship between P and D  
Purpose of

Annotations to 2005 Act

S.32  
S.33  
S.34  
S.35  
S.35(2)  
S.36  
S.37

Apology

Effect of  
Lack of (aggravating factor)  
Scope of  
Unsatisfactory

Business/Organisation/Managers/Senior staff

Multiple imputations against

Children

Impact on

Community leaders

Companies/Corporations

Comparative Verdicts

Convictions (prior) – see Mitigation  
prior convictions

Cowardice imputed

Creditors' meetings

Defamation at

Criminal Imputation

Gangster

Law breaker  
Liar  
Selling drugs (that person is)  
Thief/Fraudster

Damage presumed

Dishonouring of Cheques

Door mat (treating someone like)

Entitlements to Damages

Generally

Exemplary Damages

False Names (giving of to police)

Forgery

Fraud

General Damages

Grape-vine Effect

Grief & Annoyance

Health & Safety

Homosexuality

Interest

Pre-judgment  
Rate of

Joint & Several Tortfeasors

Justice (impeding course of)

Justification

Liability for Damages

Extent of

Limited Publication Cases (damages awards in)

Managerial Failures

Mitigation

Poor reputation (relevant sector)  
Prior convictions  
Reputation (previously tarnished) see Reputation – previously tarnished  
Similar publications

Paedophilia

Political/Politicians

Corruption (allegation of)

Polly Peck Defence

Post-Writ/action but Pre-Trial  
defamation

Presumptions

Professionals

Psychiatric Injuries

Aggravation

**Purpose of Award**

**Relationship breakdown** (associated  
defamation)

**Republication**

**Reputation**

CEO

Corporations

Previously tarnished

**Thick skin**

Relevance of

**Trade & Business (damage to)**

**Transitional issues**

**Veterans**

Defamation of

**Vindication**

**Web publication**

## APPORTIONMENT

### General Principles

“[Fitzgerald] 97 The principles applicable to apportioning the award of general damages, excluding the aggravated damages awarded against the second defendant alone, as between the first defendant and the second defendant are conveniently set out in Rowan v Cornwall & Ors (No. 7) [2003] SASC 49 (paragraph 16):

‘16. Section 26 of the Wrongs Act provides that the determination of contribution recoverable from any person shall be the amount the Court finds to be just and equitable, having regard to that person’s responsibility for the damage. When considering what is just and equitable for the purpose of apportioning damages where the plaintiff’s reputation has suffered in consequence of the publication of several defamatory statements, it will be necessary to examine the extent to which the acts of each defendant has caused the damage suffered by the plaintiff. The State defendants relied on the remarks of the High Court in Podrebersek v Australian Iron and Steel Pty Ltd (1985) 59 ALR 529 at 532-533 and in Wynbergen v Hoyts Corporation Pty Ltd (1997) 149 ALR 25 per Hayne J at 29 with whom the other members of the court agreed. Both those cases concerned apportionment for contributory negligence but the approach I have identified is consistent with the principle expressed in those decisions that, when determining a proper apportionment of responsibility, regard must be had to the relative importance of the acts or the parties in causing the damage.’

98 Section 26 of the Wrongs Act has been repealed and replaced by the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001; and s 6(5) of that Act is in substantially the same terms.” **Fitzgerald v Southern State Broadcasters Pty Ltd & Anor** 28/7/05 [2005] SADC 93 Cole J



## QUANTUM

### Affairs

**\$5,000 each was awarded to the P's who were falsely alleged to be having an adulterous affair with each other.** The D communicated this to Mr Croft. The Ps were work colleagues at CMA in the towns of Moree and Inverell. The rumour became quite widespread, but Mr Croft seemed to disregard what he had been told and only passed it on to the P's. Specific hurt flowed to the Ps upon discovering the publication to Mr Croft. Matter involved the NSW Defamation Act 1974. *Cush v Dillon; Boland v Dillon* 25/2/09 [\[2009\] NSWDC 21](#) Elkaim SC DCJ

### Aggravated Damages

#### **Aggravating factors (anonymity)**

In *Amanatidis & Anor v Darnos* 29/4/11 [\[2011\] VSC 163](#) Sifris J awarded \$5,000 and \$10,000 respectively to a husband and wife who were alleged, in letters sent to two people (one being a priest), to have done various inappropriate things in relation to handling the estate of their deceased relative. The award was made in the context of an acrimonious family dispute. The **anonymous nature of the letters was an aggravating factor.**

#### **Aggravating factors (apology insufficient)**

*RJ v JC* 21/10/08 [\[2008\] NSWDC 217](#) Gibson DCJ awarded \$30,000 in the case of limited verbal accusations of paedophilia in the context of a family feud and access issues. No aggravated damages awarded despite apology being too little and too late and P's knowledge of the falsity of the accusation.

*Moumoutzakis v Carpino* 15/8/08 [\[2008\] NSWDC 168](#) defamatory remarks by D **suggesting P was a gangster and law breaker were published to about a dozen people in the same block of shops D & P enjoyed as holders of strata title.** The remarks were sent as letters and posted in a public area associated with the shops. P made to feel like a criminal and suffering abuse to that effect even from passing drivers. Similar assessments where limited publication compared. **Section 35(2) given detailed consideration. The statutory cap can only be exceeded if aggravated damages are awarded.** Aggravated damages awarded here as clear evidence of **malice, late abandonment of hopeless defence of partial justification, and an 'apology' that was far from an apology** and only caused P added distress. \$50,000 damages, including aggravated damages, awarded by Gibson DCJ.

*PK v BV (No 2)* 9/12/08 [\[2008\] NSWDC 297](#) Gibson DCJ awarded \$50,000 each (including aggravated damages) to a husband and wife who were **defamed in private conversations as liars and thieves.** The publication was very limited and

the **'grapevine effect' was not pleaded**. Despite not being pleaded 'it is part of the natural pain of mind which accompanies such publications that a [P] will fear repetition'. The **impact upon the Ps' family, particularly their children, was very strong**. The D's defence of truth was inflammatory and D's 'apology' was too little and too late and unconvincing.

### ***Aggravating factors (apology – lack of)***

See [Apology – Lack of \(aggravating factor\)](#) below

### ***Aggravating factors (baseless allegations)***

In *Manefield v Child Care NSW* 15/12/10 [\[2010\] NSWSC 1420](#) the **D sent out a letter to its 650 members imputing various negative things about P**. Kirby J found that "Mr Manefield, at the time of publication, was a [45 y.o.] man of maturity and achievement. He had been a consultant for much of his life and also a manager. He had been on the KU Children's Services Board and had been its President for five or six years. Here, each imputation was serious. Imputations (a) to (e) **attacked Mr Manefield's honesty and integrity**. Imputation (f) imputed **incompetence** to him. Collectively, they were a well aimed **knock-out blow in respect of his ambitions** to have his own operation (with other members of his Board) in the area of his passion, child care. Although no claim is made for special damages, it is unsurprising that, following the publication, he abandoned the Early Learning Australia project and left the industry. I accept that Mr Manefield's reputation in the child care industry suffered greatly. I also accept that he was very hurt by the attack that had been made upon him, and the more so because it was **misconceived and utterly baseless**. I believe the appropriate award is **\$150,000 including aggravated damages**" @206-208.

### ***Aggravating factors (calling for prosecution of P)***

*Fitzgerald v Southern State Broadcasters Pty Ltd & Anor* 28/7/05 [\[2005\] SADC 93](#), Cole J found that the D's calling for the prosecution of the P (requesting such by letter to the police and the Premier) constituted aggravation of a serious nature.

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